

In the United States Court of Federal Claims

Nos. 17-449, 17-499
Filed: August 29, 2017

CONTINENTAL SERVICES
GROUP, INC., and PIONEER CREDIT
RECOVERY, INC.,

Plaintiffs,

and

COLLECTION TECHNOLOGY, INC.,
PERFORMANT RECOVERY, INC.,
ALLTRAN EDUCATION, INC., and
PROGRESSIVE FINANCIAL SERVICES,
INC.,

Intervenor-Plaintiffs,

v.

THE UNITED STATES,

Defendant,

and

CBE GROUP, INC., PREMIERE
CREDIT OF NORTH AMERICA, LLC,
GC SERVICES LIMITED PARTNERSHIP,
FINANCIAL MANAGEMENT SYSTEMS,
INC., VALUE RECOVERY HOLDINGS,
LLC, WINDHAM PROFESSIONALS,
INC., and AUTOMATED COLLECTION
SERVICES, INC.

Intervenor-Defendants.

ORDER

On August 24, 2017, the Government filed a Notice Of The Status Of Corrective Action, informing the court that the Department of Education's evaluation teams had completed their review of the revised proposals, and that the evaluation reports were now being prepared and should be finalized within the next few weeks. The Government also requested that it be allowed to file an additional Status Report on September 14, 2017. The Government's request to file a Status Report is granted.

In addition, the Government is to file that status report in the appeal of the court's May 31, 2017 preliminary injunction, currently pending in the United States Court of Appeals for the Federal Circuit, Case No. 17-2155, together with (a) corrections regarding the transcript of the hearing convened by the court on May 2, 2017; and (b) the e-mail sent by the court's law clerk on April 21, 2017, that is attached to this order as Court Exhibit A.

The Government should supplement their Appendix by filing all pages of the transcript of the afternoon hearing on May 2, 2017 to provide complete context. These pages are required to correct the narrative on pages 20–21 of the Government's August 15, 2017 brief on appeal, wherein the counsel for the Department of Justice contends that the court excluded Plaintiffs and Plaintiff-Intervenors from participating in a conference convened by the court in its chambers. As the transcript demonstrates, on pages 30–31, it was the court's perception that all parties that wished to participate in the conference attended. In addition, the court ordered counsel for the small business-intervenors removed by a Court Security Officer ("CSO"), because she shouted at the court and interrupted the proceedings.

With respect to the e-mail, at page 15 of the Government's August 15, 2017 brief on appeal, counsel for the Department of Justice stated "the trial court acknowledged having contacted the Secretary of Education's office via e-mail to attempt to force the United States into mediation." But, as the April 21, 2017 e-mail from the court's law clerk evidences, the court had no direct communication with the Secretary of Education nor did the court "attempt to force the United States into mediation." Court Ex. A. Instead, the court explained that it issued an Order on April 19, 2017, so that the parties could negotiate a global solution. In addition, counsel for all parties were copied on the e-mail.

IT IS SO ORDERED.

s/Susan G. Braden
SUSAN G. BRADEN
Chief Judge

COURT EXHIBIT A

From: xxx/DCA/CFC/USCOURTS
To: xxx/DCA/CFC/USCOURTS

Date: Friday, April 21, 2017 07:31PM
Subject: Fw: \$2.8 billion suit against DOE- Suggestion from Chief Judge Braden

Law Clerk to the Honorable Susan G. Braden
United States Court of Federal Claims
717 Madison Place, N.W.
Washington, D.C. 20439
Phone: 202-357-6519, Fax: 202-357-6522

-----Forwarded by xxx/DCA/CFC/USCOURTS on 04/21/2017 07:31PM -----

To: James.manning@ed.gov, lday@ashcroftlawfirm.com
From: xxx/DCA/CFC/USCOURTS
Date: 04/21/2017 07:29PM
Cc: todd.canni@pillsburylaw.com, jshaffer@smithpachter.com, lauren.moore@usdoj.gov,
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Subject: \$2.8 billion suit against DOE- Suggestion from Chief Judge Braden

(See attached file: 4.17.2017 Stay.pdf)

(See attached file: 4.10.17 Extension of TRO.pdf)

(See attached file: Law360 - 2.8B DOE Debt Deal Cases Stayed For Solution Talks.pdf)

(See attached file: List Of Bid Protest Cases And Law Firms.pdf)

Chief Judge Braden is currently presiding over six bid protests arising out of a \$2.8 billion Department of Education contract for debt collection services. On Wednesday, April 19, 2017, the court entered an order staying the protests, so that the parties could negotiate a global solution. In the court's judgment, this matter needs to be handled by a skilled mediator, particularly since very few executive appointments have been made to date, either in the Department of Education or the Department of Justice.

Former Attorney General John Ashcroft was very helpful to Chief Judge Braden several years ago in a dispute regarding the second largest defense contract. The purpose of this email is to connect Mr. Manning, at the Department of Education, and Ms. Day, at the Ashcroft Firm, to ascertain if mediation may be of interest.

Attached to this e-mail is an article briefly summarizing the cases filed to date against the Department of the Education, the orders recently entered by the court and a list of all the parties involved and their counsel of record.

The court will convene a status conference in court on these bid protests on Monday, April 24, 2017 at 3:00 PM (E.S.T.), at which time the court would appreciate your views as well as all counsel of record, on the viability of mediation.

Sincerely,

xxx

Law Clerk to Chief Judge Susan G. Braden
United States Court of Federal Claims
717 Madison Place, N.W.
Washington, D.C. 20439
Phone: 202-357-6519, Fax: 202-357-6522

Attachments:

4.17.2017 Stay.pdf

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Talks.pdf

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